

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	CR No. 06-00056-WES
	:	
TERRENCE GREENE	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

This matter has been referred to me pursuant to 28 U.S.C. § 636(b)(1)(B) and 18 U.S.C. § 3401(i) for proposed findings of fact concerning whether Defendant is in violation of the terms of his supervised release and, if so, to recommend a disposition of this matter. In compliance with that directive and in accordance with 18 U.S.C. § 3583(e) and Fed. R. Crim. P. 32.1, a revocation hearing was held on April 25, 2023, at which time Defendant, through counsel and personally, admitted that he was in violation of his supervised release conditions as charged. At this hearing, I ordered Defendant released pending my Report and Recommendation and final sentencing before District Judge William E. Smith.

Background

On April 19, 2023, the Probation Office petitioned the Court for the issuance of a summons. On April 25, 2023, Defendant was before the Court for a revocation hearing at which time he admitted to the following charges:

Violation No. 1. Mandatory Condition. Defendant must not commit another federal, state, or local crime.

On December 1, 2020, Defendant committed the misdemeanor offenses of Simple Assault and Disorderly Conduct-Fighting as evidenced by charges filed by the Newport Police Department.

Violation No. 2. Mandatory Condition. Defendant must not commit another federal, state, or local crime.

On October 24, 2020, Defendant committed the misdemeanor offenses of Reckless Driving and Other Offenses Against Public Safety as evidenced by the Newport Police Department arrest report.

Violation No. 3. Mandatory Condition. Defendant must refrain from any unlawful use of a controlled substance.

Defendant used marijuana as evidenced by his positive drug screens on September 3, 2019; August 20, 2020; and April 7, 2023.

Violation No. 4. Mandatory Condition. Defendant must not commit another federal, state, or local crime.

On May 31, 2021, Defendant committed the misdemeanor offense of Domestic Simple Assault/Battery as evidenced by the Newport Police Department incident report.

Violation No. 5. Mandatory Condition. Defendant must not commit another federal, state, or local crime.

Defendant committed the misdemeanor offenses of Driving With a Suspended/Revoked/Canceled License – 3rd plus Offense, on August 7, 2022; August 17, 2022; and September 23, 2022 as evidenced by the charges filed in Second Division District Court.

Recommended Disposition

Section 3583(e)(2) provides that if the Court finds that Defendant violated a condition of supervised release, the Court may extend the term of supervised release if less than the maximum term was previously imposed. The maximum term of supervised release is life.

Section 3583(e)(3), provides that the Court may revoke a term of supervised release and require the Defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term or supervised release without credit for time previously served on post release supervision, if the Court finds by a preponderance of evidence

that the defendant has violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be sentenced to a term beyond 5 years if the instant offense was a Class A felony, 3 years for a Class B felony, 2 years for a Class C or D felony, or 1 year for a Class E felony or a misdemeanor. If a term of imprisonment was imposed as a result of a previous supervised release revocation, that term of imprisonment must be subtracted from the above-stated maximums to arrive at the current remaining statutory maximum sentence. Defendant was on supervision for a Class B felony. Therefore, he may not be required to serve more than three years' imprisonment upon revocation.

Pursuant to 18 U.S.C. § 3583(h) and § 7B1.3(g)(2), when a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized, the Court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release. The authorized statutory maximum term of supervised release is life.

Section 7B1.1 provides for three grades of violations (A, B, and C). Subsection (b) states that where there is more than one violation, or the violation includes more than one offense, the grade of violation is determined by the violation having the most serious grade.

Section 7B1.1(a) notes that a Grade A violation constitutes conduct which is punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, (ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device; or any other offense punishable by a term of imprisonment exceeding twenty years. Grade B violations are

conduct constituting any other offense punishable by a term of imprisonment exceeding one year. Grade C violations are conduct constituting an offense punishable by a term of imprisonment of one year or less; or a violation of any other condition of supervision.

Section 7B1.3(a)(1) states that upon a finding of a Grade A or B violation, the Court shall revoke supervision. Subsection (a)(2) provides that upon a finding of a Grade C violation, the court may revoke, extend, or modify the conditions of supervision. Defendant has committed a Grade C violation. Therefore, the Court may revoke, extend, or modify the conditions of supervision.

Section 7B1.3(c)(1) provides that where the minimum term of imprisonment determined under § 7B1.4 is at least one month, but not more than six months, the minimum term may be satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e) for any portion of the minimum term. Should the Court find that Defendant has committed a Grade B or C violation, § 7B1.3(c)(2) states that where the minimum term of imprisonment determined under § 7B1.4 is more than six months but not more than ten months, the minimum term may be satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in §5C1.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment. The second provision applies to this matter.

Section 7B1.3(d) states that any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be

ordered to be paid or served in addition to the sanction determined under § 7B1.4 (Term of Imprisonment), and any such unserved period of confinement or detention may be converted to an equivalent period of imprisonment. There is no outstanding restitution, fine, community confinement, home detention, or intermittent confinement.

Section 7B1.4(a) provides that the criminal history category is the category applicable at the time Defendant was originally sentenced. Defendant had a Criminal History Category of VI at the time of sentencing.

Should the Court revoke supervised release, the Revocation Table provided for in § 7B1.4(a) provides the applicable imprisonment range. Defendant committed a Grade C violation and has a Criminal History Category of VI. Therefore, the applicable range of imprisonment for this violation is eight to fourteen months, and the maximum by statute is twenty-four months.

Section 7B1.5(b) provides that, upon revocation of supervised release, no credit shall be given toward any term of imprisonment ordered, for time previously served on post-release supervision.

Analysis and Recommendation

Defendant was released from custody in early 2019 based on a sentence reduction pursuant to the First Step Act. He served well over a decade in prison, and his initial transition back to the community was turbulent. Notably, in late 2020, he was involved in a road rage altercation and ultimately plead no contest to state assault charges. Later, in 2021, he was involved in a domestic altercation and ultimately plead no contest to a state domestic assault charge. He has also had some positive marijuana screens and some driving offenses.

Defendant has admitted to several Grade C violations, and the guideline range is eight to fourteen months. Defendant has not had any serious infractions for nearly two years at this point, and I am recommending a sentence of time served. While these violation charges played out during the COVID pandemic, Defendant was incarcerated for approximately four months and spent two months on home detention with electronic monitoring. He also resided for a period at the Houston House. These past sanctions were effective in bringing some stability to Defendant's situation and are a sufficient punishment for these Grade C violations.

Defendant is presently in a much more stable situation. He is engaged in treatment and benefits from prescription medication. He is employed and has been able to get his driver's license reinstated. I also recommend a twenty-four month term of supervised release to support Defendant as he continues his successful transition back to the community.

Conclusion

After considering the sentencing factors set forth in 18 U.S.C. § 3553(a), I recommend that Defendant be sentenced to time served with twenty-four months of supervision with the following special conditions:

1. Defendant shall participate in a program of substance abuse treatment (inpatient or outpatient), as directed and approved by the Probation Office.
2. Defendant shall participate in a program of substance abuse testing (up to seventy-two drug tests per year) as directed and approved by the Probation Office.
3. Defendant shall participate in a program of mental health treatment as directed and approved by the Probation Office.

4. Defendant shall participate in a manualized behavioral program as directed by the Probation Office. Such program may include group sessions led by a counselor or participation in a program administered by the Probation Office.

5. Defendant shall contribute to the cost of all ordered treatment and testing based on ability to pay as determined by the Probation Officer.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen days of its receipt. Fed. R. Crim. P. 59; LR Cr 57.2. Failure to file specific objections in a timely manner constitutes a waiver of the right to review by the District Court and the right to appeal the District Court's Decision. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
April 25, 2023